IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.388 OF 2006

Abdul Rehman Abdul Gafoor Shaikh. ..Applicant.

V/s.

State of Maharashtra. ..Respondent.

Mr.P.K.Dhakephalkar, i/b Shri Sineen Shaikh for applicant.

Ms.Rajeshree M.Gadhavi, APP for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 22, 2006.

P.C. :

1. Heard counsel for the parties.

2. This is second bail application preferred by the present application. First bail application was decided on merits by detailed speaking order passed by me on 29th October, 2004. Against that decision applicant took the matter in appeal before the Apex Court which has also been dismissed on 11th February, 2005. Mr.Dhakephalkar, advocate for the applicant submits that in the present application, the applicant is pressing for prayer of bail on the limited ground that the offence in which the applicant is being tried is punishable with minimum sentence of 5 years out of which the applicant is

already in custody since 5th of March, 2003 and spent almost three years' period in jail. Ordinarily, the fact that the accused is in jail for such a long period and trial has not progressed can be taken into account by the court to show indulgence for release of the accused on bail. However, in the present case, the offence for which the applicant is being tried is serious offence including provision of section 3(1)(ii), 3(2), 3(4), 3(5) and 4 of M.C.O.C.Act, which is non-bailable offence. In such a case, bail can be granted only on recording satisfaction, as is required by Section 21 of the Act. That aspect has already been considered in my earlier order. Besides, the sentence, which is provided for the offence is minimum five years. It would have been different matter, if the sentence would be maximum five years. In addition, the record indicates that the trial has now commenced and charge has also been framed.

3. The grievance of the applicant that the earlier bail application has been rejected in October, 2004 and the trial has not progressed even an inch thereafter. The same is countered by the learned APP on the argument that the trial could not proceed because of order passed by this court on 6th

September, 2005 which operated till 8th February, 2006. Mr. Dhakephalkar for the applicant however, submits that it was not an order of stay of trial granted by this court as such, but statement made by the prosecuting agency that they will not proceed with the matter.

4. Be that as it may, on reading the order dated 6th September, 2005 passed by the Division Bench, which is appended to the reply affidavit filed by the State, it is obvious that matter was referred to the full bench. The court was considering prayer for stay but no formal order came to be passed on the statement made by the Investigating Officer that they will not proceed with the trial until further orders of this court. That statement was obviously understood by the trial court and has not proceeded with the trial any further. As the position has now been clarified by order dated 8th February, 2006 and the trial has commenced by framing of charge, in my opinion, no indulgence is warranted on the ground pressed into service having regard to the fact situation of the present case and the seriousness of the findings. Hence, dismissed.

5. It is expected that the trial court will

proceed with the trial expeditiously as the offence is registered in the year 2003.